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Agenda for a feminist legal curriculum

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This paper contends that a feminist legal curriculum is necessary for legal education, and that it is also necessary for feminism. It argues that feminism is more than simply one of a number of useful critical perspectives, and that it must be located centrally within the law school and the legal curriculum in order to be effective. In accepting that a black-letter training has many merits and that the current core curriculum has value, the paper nevertheless suggests that both require substantive modifications and new critical dimensions. Specifically, to meet its obligations to our students, the legal curriculum needs to incorporate subjects relevant to women's experience, to make space for women's viewpoints and to offer feminist perspectives in every area of law – and these must be compulsory, not optional, additions. Finally, the paper concludes that implementation of such a curriculum is not only desirable, but also possible, and may indeed become a policy imperative as well as a feminist one.

An agenda for a feminist legal curriculum must begin with a rationale. Why should we be considering what a feminist legal curriculum might look like? Why should we contemplate the idea at all? From the perspective of legal education, perhaps the main rationale for a feminist legal curriculum is that feminism[1] is about women, and women make up more than half of our law

1. I suppose I ought to define what I mean by 'feminism', but I am not going to do so. This is not because I assume that everyone knows – and everyone agrees – what feminism is, or even because I assume that everyone *dis*agrees, so that a common definition is impossible. It is because I trust that the meaning and scope of feminism will be made apparent in the discussion that follows: for that is, in a sense, what this paper seeks to describe. One of the dangers of setting down one's own potted version of feminism is that it can too easily be seen as prescriptive, thus alienating at the start a good proportion of one's potential sympathisers as well as one's opponents.

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students in the UK, more than half of the entrants into the legal profession here, and more than half the world population.[2] The current legal curriculum does not reflect this. Indeed, it does not *begin* to reflect women's concerns. The family plays a central part in women's lives, but family law is not a compulsory subject on the LLB; nor is employment law, though paid work is a prime site of women's material disadvantage. Women's legal history is not taught, and women's experiences and perspectives are so often ignored in the teaching of substantive law that it is difficult to locate ourselves within a legal system so clearly designed by men for men.

Feminist scholars have often criticised judgments for the absence of consideration of women's point of view. This is not to suggest that there is a specific 'woman's point of view', but rather that many cases, in crime or tort or property law, seem to be decided without reference to the point of view of the women in the particular case. This happens not simply because judges are reluctant or unable to see things except from the perspective of men, but because the perspective of men *is* the perspective of law. Learning to 'think like a lawyer' means putting aside those viewpoints which are 'irrelevant' to law, and those viewpoints are often those which derive from women's experience – for example, in the law of rape, where the law is concerned with whether the alleged rapist knew the woman did not consent, not whether she actually did not consent, or the co-ownership rules, which do not regard 'home-making' as a contribution to the value of a home.

But, of course, it is not even this simple. There is also the problem that the legal reasoning we teach in law school takes a view of justice with which men tend to feel more affinity than women. It did not need Carol Gilligan's research[3] to show that women grow up concerned to care, conciliate and take account of context; that is how women are raised in our society – it is our role. Men, on the other hand, are expected or allowed to take a more distanced, 'objective' approach to moral dilemmas, and so can afford to ignore circumstances and personalities in preference for the certainty of rules of general application: *that* is justice to them.[4] Only the other day, while looking through applications from prospective students, I came across the following personal statements on two successive forms:

> A: 'I want to help people who can not help themselves; I have a strong sense of what is right and wrong ...'
>
> B: 'In law there is no wrong or right, it's just the way you argue your case and the evidence to support your beliefs.'

2. B Cole *Trends in the Solicitors' Profession – Annual Statistical Report 2000* (London: Law Society, 2000) pp 58, 60, 65–66, 71–72.

3. C Gilligan *In a Different Voice: Psychological Theory and Women's Development* (Cambridge, Mass: Harvard University Press, 1982).

4. We can probably all offer anecdotal evidence of these differences between women and men, while recognising the significant differences *among* women and *among* men. I am not concerned with the question of whether these differences are universal or essential (ie inborn); my own view is largely social constructionist. I am simply commenting on an observable though by no means invariable phenomenon.

The first of these statements was made by a woman and the second by a man. B's comment suggests that he already grasps the basis of legal method and has put aside any notion (if he ever had it) that caring or principled action is necessarily integral to the practice of law. And A is going to be disappointed if she thinks her sense of right and wrong will have much bearing on her study of the law. Mary O'Brien and Sheila McIntyre put it well: 'Law students must learn the rules so that as lawyers they may apply them; students who wish to learn *about* the rules and to pass (subjective) judgment on them are in the wrong faculty.'[5]

Going to law school, Sheila McIntyre said on another occasion, is about 'learning to speak male as a second language, and learning it fluently'.[6] By speaking 'male', of course, she meant 'like a lawyer', but there is a literal sense too: English laws and textbooks still speak routinely of 'he' and 'him'.[7] For women students, O'Brien and McIntyre argued, there are in effect two curricula: first, the study of law, universally accepted as demanding in itself, and, second, having to 'learn a whole new *persona* which, embodying as it does "mastery" of legal "objectivity", logic, and masculine adversarial norms, constitutes a complete curriculum in its own right'.[8] There are, of course, some men who find speaking 'male' alien and difficult; and some women who learn it with great proficiency. But, as Erika Rackley points out: 'While all law students – male and female – are subject to this process of alienation, for women it is a peculiarly distorting experience, as the self they strive to become is imbued with gendered cultural signifiers which render unstable their newly acquired sense of legal identity.'[9] Proficiency in speaking 'male' (or reasoning like a lawyer) avails women little when we move into the world of legal work. Indeed, the very process of becoming fluent speakers of 'male' can lead us to imagine that we *are*, in fact, 'male', with consequent shock and disillusionment when the workplace makes it clear to us that we are only female, after all.

This leads me to the second reason why legal education needs a feminist legal curriculum. Feminism is about equality, and equality is a value espoused not only by our laws, but by our education system, our law schools and the legal profession itself. Yet the legal academy and the legal profession continue

5. M O'Brien and S McIntyre 'Patriarchal Hegemony and Legal Education' (1986) 2 Canadian J Women and Law 81, reprinted in F E Olsen (ed) *Feminist Legal Theory II: Positioning Feminist Theory Within Law* (Aldershot: Dartmouth, 1995) p 31.

6. Quoted in K C Worden 'Overshooting the Target: A Feminist Deconstruction of Legal Education' (1985) 34 Am ULR 1145, reprinted in Olsen, n 5 above, p 45.

7. Law must be the last academic discipline in the UK to cling to the outmoded and unjustified view that the masculine somehow incorporates the feminine. In that it ever did so, it did it selectively, but in any case all research points to the association in people's minds of men alone with 'he', not men and women. The use of masculine pronouns enables textbook writers to ignore and obscure situations in which 'he' does *not* stand for 'she' and where an inclusive interpretation would render statements misleading or meaningless. Importing the odd 'she', on the other hand, obliges the writer to contemplate the possibility of the law's differential impact on women. It is time that legal academics came into line with academics in other disciplines and other countries – and then perhaps the lawmakers would follow suit, as they have done in Australia and the US.

8. O'Brien and McIntyre, n 5 above, p 35.

9. E Rackley 'Representations of the (woman) judge: Hercules, the little mermaid, and the vain and naked emperor' (2002) 22 LS 602.

to exhibit deep-rooted inequalities, especially, though not uniquely, with respect to women. Equal-opportunity policies and non-discrimination legislation are plainly not enough. Law schools need to think more about their obligations to their women students (and indeed their women staff), to treat them equally within the institution and to prepare them adequately for life in the world outside.

These grand goals presuppose that what and how we teach influences how our students think and act. As educators, we have to think this; but, in any case, one of the aims of the LLB is to provide an academic preparation for legal practice, even if many of our students will not end up as lawyers. The fact that it is not the *only* preparation is all the more reason to ensure it offers critical perspectives and woman-centred content: they are needed to sustain our students through the even more alienating LPC or BVC, training contract or pupillage. Clare McGlynn argues that:

> 'It is in the law school that the values, ethics and principles of the law and the legal profession are first introduced, developed and inculcated. And, it is the law students of today who will become the lawyers, academics and judges of tomorrow and who will, therefore, exert a considerable influence on both the role and status of women lawyers, and on the ways in which the law itself interacts with women's lives.'[10]

Within the legal profession today, prejudice is simultaneously assumed and denied. Law schools educate their students as if those of equal ability and attainment have an equal chance of acceptance in the profession. We know, however, that this is not true: that preference will be given to young, white, middle-class, Oxbridge-educated males, and that our older students, our black students, our working-class and female students, in fact *all* my students, since I teach at a 'new' university, are not going to be considered to be of equal 'merit'; are possibly not going to be considered at all. Philip Kenny summed up this contradiction when he wrote in the second edition of his *Studying Law*:

> 'It is a regrettable, but probably undeniable, fact that the majority of members of the legal profession are prejudiced about nearly everything about which it is possible to harbour prejudice – often in a charmingly courteous and self-deprecatingly apologetic way but, nevertheless, decidedly prejudiced.'

Yet Kenny went on to conclude: 'there is no reason for a woman student not to assume that she can compete on an absolutely equal footing in any branch of the profession.'[11] What kind of double vision enabled him to say this?

We know that it is not so, but what can we do about it? At the very least we can try to prepare our students to expect to encounter sexism and misogyny (not to speak of racism and homophobia) in the workplace, and not to be surprised and disempowered when they find it. But this, of course, is hardly adequate, though it is about as much as most good law schools provide: a sympathetic personal tutor, some pragmatic careers advice and perhaps one

10. C McGlynn *The Woman Lawyer: Making the Difference* (London: Butterworths, 1998) p 27.
11. P H Kenny *Studying Law* (London: Butterworths, 2nd edn, 1991) pp 10–11.

'Women and Law' course for them to let off steam in. If legal education is to arm women students to challenge prejudice within the legal profession, they need more than this: they need the knowledge that empowers, the critical skills to defend and attack and, above all, the conviction that their views and their needs matter. These are qualities not presently fostered by today's legal curriculum.

There is a third, and even more important, justification for a feminist legal curriculum. Unfashionable as it is to make universalising claims, the fact remains, as Joanne Conaghan puts it, that while disadvantage varies from place to place and from person to person, and even though some men, too, experience gender-based disadvantage, 'evidence of the continued global oppression of women remains overwhelming'.[12] The evidence may be overwhelming, but women's oppression remains one of those subjects about which it is almost impossible to speak. Everyone knows about rape and violence and sexual harassment and economic exploitation and the rest, but the force of this knowledge is almost always diminished by reducing it to an individual's problem, or even by denying it altogether, since men suffer too, women can be violent, some men are nice, women make their own choices, they are partly to blame, and so on. Many young women growing up in the affluent West do not feel oppressed, and do not *want* to feel oppressed.

Faced with gap between rhetoric and the reality, between the formal equality and the substantive *in*equality of women and men, the legal academy and the legal profession have remained almost totally indifferent to the idea that they might be in any way responsible, or could do anything about it beyond what they are already doing. Yet law is one of the institutions which has the power to alleviate women's oppression, if not to end it altogether, and education must bear some responsibility for telling students the truth. The future of our law degree 'must lie in the pursuit of a *transformative*, rather than *replicative*, view of legal education'.[13]

A FEMINIST LEGAL CURRICULUM IS NECESSARY FOR FEMINISM

Historically, feminism has always been bound up with law reform. In nineteenth-century Britain, when women were denied rights to their children, to property, to education, to bodily autonomy, to higher-status work and equal pay and conditions in the work they were allowed to do, not to speak of the vote, law reform was a material as well as a symbolic first step in the struggle for equality. First-Wave feminists, excluded from Parliament and the legal profession, secured reform by lobbying sympathetic male lawyers and MPs, but some of them also taught themselves law and wrote about it with a confident expertise and insight

12. J Conaghan 'Reassessing the Feminist Theoretical Project in Law' (2000) 27 JLS 354.

13. C Parker and A Goldsmith '"Failed Sociologists in the Market Place": Law Schools in Australia' (1998) 25 JLS 47. Author's emphasis.

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that won them considerable support for their various causes.[14] Once the universities were opened to women, formal legal study became possible; women were still excluded from practice (though they kept trying to enter), but the value of a study of law, for those involved in feminist campaigns, was self-evident, and the knowledge and understanding they gleaned stood them in good stead in their struggles against men reluctant to share legal and political power.[15]

Law continues to exercise powerful appeal as an instrument for social change. The desire to better women's position remains a motive for many women who choose to study law, particularly mature students. I have had many feminist students, indeed, I was one myself, who come to law school to learn law's secrets from the inside, so that they can devise ways of intervening, so that they can one day intervene themselves. We take heart from the knowledge that, while resistant to change, law has not been wholly impervious to it, nor has the academy. Women are clearly better off today than they were 100 years ago, or even when I was first an undergraduate. 'The "power" of law is certainly present but not undifferentiated', Anne Bottomley and Joanne Conaghan point out. 'It is uneven, and allows us space: space to argue, to engage, and (in the active sense of the word) to "resist".'[16] We would not engage with law if we did not believe that it can work for us as well as against us.

For many feminists, teaching and feminist legal scholarship are our forms of feminist activism. Our feminist work is a necessity for our own sanity; we need a focus for our criticisms and our anger, a place where we can talk about ourselves, which will not be dismissed as the personal (and irrelevant) grievances of individual disaffected women. A feminist legal curriculum would legitimatise this work: it would represent an institutionalised recognition that what we do is important. For, whatever the power of *law* to effect social change, there can be no doubt about the power of *education*. Alongside each formal

14. Eg B Bodichon 'A Brief Summary in Plain Language of the Most Important Laws Concerning Women' (1854), reprinted in C A Lacey (ed) *Barbara Leigh Smith Bodichon and the Langham Place Group* (London: Routledge and Kegan Paul, 1987); F P Cobbe 'Criminals, Idiots, Women, and Minors: is the Classification Sound?' (1868) and 'Wife Torture in England' (1878), reprinted in S Hamilton (ed) *'Criminals, Idiots, Women, and Minors': Nineteenth-Century Writing by Women on Women* (Peterborough, Ont: Broadview Press, 1996); C Norton *Separation of Mother and Child by the 'Law of Custody of Infants' Considered* (1837) and *English Laws for Women in the Nineteenth Century* (1854), reprinted in J O Hoge and J Marcus (eds) *Selected Writings of Caroline Norton* (Delmar, NY: Scholars' Facsimiles and Reprints, 1978).

15. I do not know when the first woman was admitted on to an English law degree course, nor who she was; but Christabel Pankhurst studied at Victoria College (now the University of Manchester) between 1903 and 1906, graduating with a first class honours degree – and she was the only woman law student at the college during that time. See C Pankhurst *Unshackled* (first published in 1959) (London: Cresset, 1987). Along with other women, Pankhurst tried to become a barrister, but both legal professions blocked the entry of women to their ranks until forced to admit them following the enactment of the Sex Disqualification (Removal) Act 1919. See E M Lang *British Women in the Twentieth Century* (London: T Werner Laurie, 1929) ch VI; and N A Franz *English Women Enter the Professions* (Cincinnati, Ohio: privately printed, 1965) pp 274–277.

16. A Bottomley and J Conaghan (eds) *Feminist Theory and Legal Strategy* (Oxford: Blackwell, 1993) p 3.

reform, feminists have recognised the need to change attitudes: the two go hand in hand. Legal education, therefore, becomes uniquely important as a site for feminist engagement. First, by influencing the minority of our students who go on to work in the field of law, we may help to bring about changes in the operation of the law and even the laws themselves. Second, considering the much larger number of students whose eyes may be opened to new knowledge and ideas, a feminist legal curriculum offers the possibility of changing attitudes, even changing lives.

One of the ways in which a legal system reproduces itself (and repels challenges) is through the training of its personnel. Up to 100 years ago, the laws in this country were exclusively made and administered by ruling-class men. Not surprisingly, the laws reflected their interests and, as long as law-making remained a masculine activity, it was easy to keep them this way. Then, in 1919, the legal profession was forced to admit women to its ranks, the last profession (except for the Church) to do so. Throughout the greater part of the twentieth century, legal women remained a minority, and institutional resistance meant that very few rose in the hierarchy of either the profession or the law school. The last quarter of the century saw a huge widening-out of education, a great increase in the numbers of women going to university and the implementation of anti-discrimination legislation and equal opportunities policies. As more and more women entered law, it became harder to curtail their progress. But a range of informal mechanisms helped to maintain the status quo, such as the homosocial bonds and cultures which excluded women and which, together with the sexualising of women in the workplace, ensured that however well we spoke 'male', we could never be accepted as 'male'. The ideal worker was (and still is) conceptualised as a person unencumbered by domestic responsibilities, a model which, in a world where childcare and housework were women's work, *meant* a man or a single, childless woman – but, of course, all women were potential mothers, so the ideal worker must always be a man. Which made it hard to get on, if you were a woman.[17]

In the last decade, feminist research has uncovered and exposed these mechanisms, but this, alone, would not necessarily prompt reform were it not for the simultaneous influence of market forces which have made some women worth recruiting and promoting for their sheer productivity. All these developments have made inroads into ruling-class, male privilege in the legal profession. But there remains one weapon, perhaps the most powerful of all: the legal curriculum. When learning to 'think like a lawyer' means learning to think like a ruling-class man, when other perspectives are, at best, marginalised or, at worst, ignored, then it does not matter whether your future lawyer is male or female: he or she will have the same view of law. The well-trained woman lawyer, the woman judge, will behave exactly as the male lawyer and the male

17. See McGlynn, n 10 above; R Collier '"Nutty Professors", "Men in Suits" and "New Entrepreneurs": Corporeality, Subjectivity and Change in the Law School and Legal Practice' (1998) 7 SLS 27; R Collier 'The changing university and the (legal) academic career – rethinking the relationship between women, men and the "private life" of the law school' (2002) 22 LS 1; and C Wells 'Women Law Professors – Negotiating and Transcending Gender Identities at Work' (2002) 10 FLS 1.

judge: she will apply 'the law' according to the 'relevant' legal criteria. She will speak 'male'. The law will go on being 'male'.

I remember being struck by a passage in the autobiography of the pioneer woman judge, Dame Elizabeth Lane, where she unwittingly described the process that women must undergo in order to attain to the 'male' objectivity demanded of legal practitioners. As a beginner barrister, Lane took on the defence of a man charged with indecent assault on a young girl – her first case involving a sexual offence:

> 'I was so horrified and disgusted with the details that I burst into tears, threw the papers into the waste paper basket, muttering to myself that I would *not* take part in such a filthy case. After a while I pulled myself together, retrieved the papers and studied and made notes on them. When it came to the trial I was wholly unperturbed. There is something about the clinical and impersonal atmosphere of a court which nullifies any prudish or squeamish reaction to the facts of a case; they become provable or disprovable like the facts of any other case. I never again boggled at cases of sexual offences.'[18]

What Lane was describing here was a process of cutting herself off from a gut reaction that is, in fact, an appropriate response to the alleged sexual abuse of a child. Notice, however, how she has transformed the *anger* she originally felt into 'prudishness' and 'squeamishness', rewriting her reaction as some kind of personal difficulty with sexual explicitness. This suggests that she has located it within a 'male' approach to sexual offences, that is, viewing them as examples of sexual expression rather than of abuse. Elizabeth Lane reveals in this anecdote that she not only learnt 'male' objectivity, she took on board the 'male' way of seeing and viewing things – a view which, in the case of sexual offences, obscures the recognition that these are crimes routinely perpetrated by men against women and that, as a woman, she had a right to be upset.

Some years after reading Lane's account, I had the experience of being on the jury at the trial of a man accused of sexually assaulting his partner's young daughters. On the facts, and with my legal knowledge, I was convinced that he was guilty, but my fellow jurors were not, and I could not persuade them round to my view. In the end, after several hours of deliberation, we had to return a majority verdict of eleven to one. What remains with me of that experience, certainly one of the most depressing of my life, was my despair that no one in the court seemed to have any understanding of the gendered dynamics of power within relationships of trust. The stories of all the women – the mother, the two little girls, whose evidence was relayed by videolink, and the woman police officer who handled their case – were simply not believed, and the man was exonerated: there was no proof, after all, only the accusations of the women. Hardest for me to bear, though no surprise to a feminist, was the fact that my fellow jurors focused all their attention on the shortcomings of the mother. A good mother would never have left her children alone with a potential abuser. The mother was clearly to blame.

It is experiences such as this that convince me of the need for a feminist curriculum in law school. If the prosecuting counsel had had the slightest

18. E Lane *Hear the Other Side: Audi Alterem Partem* (London: Butterworths, 1985) p 59.

acquaintance with the reams of feminist research on sexual crime, if he had been able to share its insights with the court, then that case might well have been decided differently. These days, judges undergo judicial training in matters of gender, but this is not much use in criminal cases where it is the jury who decide the case, not the judge. We need solicitors and barristers who know what they are talking about and who can persuade prejudiced juries on the basis of an informed reasoning that respects the point of view of women and understands the mechanics of male power.

FEMINISM, ACTIVISM, AND OTHER CRITIQUES

Before I go on to examine what shape a feminist legal curriculum might take, I want to anticipate some criticisms which may arise in relation to my necessarily broadly sketched rationale for the enterprise. First, I am aware that some legal feminists do not see such a close link between the academic project of feminist analysis and critique of law and the political programme of practical law reform; some, indeed, would prefer to keep them quite separate. While respecting the work of the pure theorists, I share with Anne Bottomley and Joanne Conaghan (and many others) the conviction that a feminist analysis of law 'does not exist in and for itself, but only in relation to the use to which it is put. For this reason, the strength of feminist jurisprudence is tested not by claims to internal coherence but rather but an ability to deliver'.[19]

Maria Drakopoulou has suggested that law is the only scholarly discipline in which feminist endeavour cannot be conducted solely within the confines of the discipline; reference must always be made to the actual (legal) situation of women, and success tends to be measured in terms of (at least potential) practical effect. This means that feminist legal scholarship is 'overwhelmingly oriented to the normative',[20] which I am sure is true, but by no means confined to law. (What about feminist historical work, for example?) For Drakopoulou, the connexion to the real-life world of law has ultimately inhibited feminist legal scholarship by limiting it to a preoccupation with law as it is, a critique of its negative effects on women, and suggestions for reconstruction. This so exactly describes the project on which I am presently engaged that I cannot argue with her, except to say that I do not think a pragmatic concern to engage with law on its own terms and to seek outcomes capable of actual achievement is necessarily limiting. These are defensive, rather than visionary, tactics, but at least they cannot be dismissed as unrealistic. I would also observe that there are different levels of feminist analysis, some of which go further to the structural heart of women's oppression than others, and a corresponding range of feminist solutions on offer. But, in the end, to be a feminist and *not* to want to change things seems to me a contradiction in terms.

A second criticism of a feminist legal curriculum might well be, why *feminist?* Why not a critical race or sexuality curriculum? Why not any one of a range of critical perspectives or, better still, all of them? Why not, indeed?

19. Bottomley and Conaghan, n 16 above, p 1.
20. M Drakopoulou 'The Ethic of Care, Female Subjectivity and Feminist Legal Scholarship' (2000) 8 FLS 209.

But it isn't a case of either/or. All critical perspectives are valuable and there should be room in the legal curriculum for all of them. What I *would* argue is that, while of course one cannot claim that all critical perspectives are subsumed within feminism, a feminist critique which takes no account of other critical positions is an incomplete one – some might say, not feminist at all.

Of course, feminism has often been guilty of representing the interests of white, middle-class, heterosexual women, to the exclusion of other women. But one way to guard against this is always to take account of *difference:* to consider how particular laws impact on different groups of women, and, indeed, different groups of men, but also to remember the ways in which members of these groups are both individuals and themselves shaped by law. All the same, while taking care not to assume complete unity of interest among all women or all men, one must not reduce everything to individual, subjective experience. Institutionalised male power crosses boundaries of race, class and sexuality, taking different forms in different settings, but nevertheless there, though sometimes rendered invisible when the very critical perspectives, such as critical race theory or queer theory, purport to speak for *all* blacks and *all* lesbians and gay men. The general exclusion of lesbian experience from 'homosexual' perspectives on law, for example, seems to me to provide the strongest rationale for the mainstreaming of feminism in all critical legal approaches.[21]

INSIDE OR OUTSIDE THE ACADEMY?

There is a final question to be cleared away before we get to the content of this feminist legal curriculum. Is the law school the right place for it? Given the vested interests involved, should we not abandon the institutions and, like the suffragettes of the 1900s or the 'Reclaim the Night' activists of the 1970s, fight for legal reform for women from outside? 'Can a truly feminist criticism be carried on within the university or for academic publications ...?' asks Adrienne Rich.[22] Audre Lorde thought not: 'The master's tools will never dismantle the master's house.'[23] This was certainly the view of the Second Wave feminists of the 1970s, whose engagement with the law in campaigns around equal pay, abortion law reform, pornography and violence against women took place almost entirely outside the law school. It would be wrong to underestimate the importance of this extramural feminist work in changing attitudes and laws (though, of course, it *is* routinely underestimated, if not entirely ignored, in establishment accounts of legal history). It would be equally wrong to assume that it was unacademic and untheorised: indeed, it formed much of the basis of the intellectual discipline of Women's Studies.

A second possibility would be to set up one's own law school, separate from existing institutions, and create a curriculum within it to deliver the goals of feminism. This is not a completely absurd idea: the Scandinavians have their

21. See R Auchmuty 'When Equality is Not Equity: Homosexual Inclusion in Undue Influence Law' (2003) 11 FLS, forthcoming.

22. A Rich 'Towards a More Feminist Criticism' in A Rich *Blood, Bread and Poetry: Selected Prose 1979–1985* (London: Virago, 1981) p 92.

23. A Lorde 'The Master's Tools Will Never Dismantle the Master's House' in A Lorde *Sister Outsider* (Trumansburg, NY: The Crossing Press, 1984).

Feminist University, founded by Berit As, a refugee from a traditional university department, and funded by the Norwegian government.[24] Rejecting traditional subject categories, it has no law school as such, but does teach courses on rights and other topics of legal concern to women.

But it is hard to see a separate development of this type being taken seriously in the UK. One of the first things the nineteenth-century British educational reformers recognised was that women must study and succeed in exactly the same curriculum as men, otherwise they would not be taken seriously. Any 'equal but different' curriculum specially designed for women would always been seen as inferior, and cause its graduates to *feel* inferior. As Emily Davies, founder of Girton College, put it:

> 'Every effort to improve the education of women which assumes that they may, without reprehensible ambition, study the same subjects as their brothers and be measured by the same standards, does something towards lifting them out of the state of listless despair of themselves into which so many fall. Supposing that the percentage of success attained by women should be considerably less than that of men, the sense of discouragement thus engendered would be as nothing compared with the general self-distrust produced by having it taken for granted that they are by nature disqualified to stand for the ordinary tests.'[25]

Because of this conviction, female students at British universities have always studied exactly the same syllabus in the same institutions as the men. When subjects with specific relevance for women *have* been introduced into the university curriculum, they have failed to survive. Women's Studies, for example, which continues to thrive in the US, has been all but destroyed by the refusal of the Research Assessment Exercise to regard it as a separate discipline (which forced Women's Studies teachers to relocate their research within conventional discipline categories) and an economic climate in which students value vocational qualifications above all others.

Over 20 years, the impact of Women's Studies on individual students was often great and lasting, but its influence on the traditional curriculum was almost negligible. Its radical teaching methods and analyses rarely transferred, and conventional research remained largely untouched by feminist insights, so much so that each discipline maintained its own research agenda and the feminist critique was forced to run alongside in a separate line of authority. This is still true: there is legal scholarship and there is *feminist* legal scholarship, and the latter takes account of the former, but not vice versa. This marginalisation of feminist thought parallels the marginalisation of women in

24. B As 'A Feminist University in Norway' in S Stiver and V E O'Leary (eds) *Storming the Tower: Women in the Academic World* (London: Kogan Page,1990) pp 224–253; B As 'A Feminist University: the Thrills and Challenges, Conflicts and Rewards of Trying to Establish an Alternative Education' in D Bell and R Klein (eds) *Radically Speaking: Feminism Reclaimed* (London: Zed Books, 1996) pp 535–545.

25. E Davies 'Special Systems of Education for Women' in D Spender (ed) *The Education Papers: Women's Quest for Equality in Britain 1850–1912* (New York and London: Routledge and Kegan Paul, 1987) p 107. See also D Bennett *Emily Davies and the Liberation of Women* (London: Andre Deutsch, 1990).

law and in the academy. For this reason, I cannot see a future in the development of separate feminist studies. To effect lasting change, feminism must be mainstreamed in the legal curriculum.

THE VALUE OF A BLACK-LETTER TRAINING

When Christabel Pankhurst entered law school 100 years ago, she anticipated that 'a knowledge of law might be useful in work for woman suffrage' – and, she reflected later, 'useful it was indeed to prove'.[26] I suspect that Pankhurst's legal education was 'useful' to her because she arrived at university with a critical perspective already formed: she knew what she was up against. Moreover, she had plenty of support in her subversive views both at home and in the wider women's movement. There is a lot to be said for postponing legal education until students have had time to develop a perspective of their own; it gives them something against which to test their new-found knowledge. British legal education would look rather different if we followed the US scheme of making law a second degree, following on after a general liberal arts course. Nevertheless, I intend to take the existing legal curriculum – the LLB – as the basis for creating a feminist version. This is, first, because although we have a fair idea what is wrong with the present system, we cannot really envisage what a legal curriculum would be like in an ideal world. How, asks Catharine MacKinnon, can we know what we want outside of patriarchy? For our desires, like everything about us, have themselves been shaped by patriarchy.[27] The other reason is pragmatic. Faced with the degree of control exercised by the legal profession on legal education, I cannot see any point in designing a feminist legal curriculum which takes no account of the profession's demands. The status of the law degree as an entree into the profession is probably the single most important factor in its appeal, and without acceptance by the profession, our utopian feminist legal curriculum would have trouble recruiting any students, let alone challenging existing legal curricula.

Paradoxically, the traditional 'black-letter' legal education which still dominates UK law schools is not a bad education for a feminist, or anyone else with political awareness and experience. As a US feminist academic remarked: 'You need to read Freud, you need to read Marx, you need to read Adam Smith. I mean, you need to read all of these figures if you are going to develop a feminist critique.'[28] Similarly, the feminist law student needs to read the cases, the textbooks, the 'great' male legal philosophers and jurists of history. You need to know the law of rape, the rules of co-ownership, the history of divorce; you need to understand the way judges reason, and how statutes come into being – because only when you grasp all these can you develop an informed feminist

26. Pankhurst, n 15 above, p 43.

27. C A MacKinnon in E C DuBois, M C Dunlap, C J Gilligan et al 'Feminist Discourse, Moral Values, and the Law – a Conversation' (1985) 34 Buffalo LR 74, reprinted in F E Olsen (ed) *Feminist Legal Theory I: Foundations and Outlooks* (Aldershot: Dartmouth, 1995) p 206.

28. D Patai and N Koertge *Professing Feminism: Cautionary Tales from the Strange World of Women's Studies* (New York: Basic Books, 1994) p 16.

critique of the law. Ngaire Naffine has called women's marginality an 'epistemic privilege',[29] since successful acquisition of lawyers' skills enables one to get right inside the art and process of legal reasoning, while our outsider status allows us to see how it has been used to further hegemonic political agendas – and how it can be used for change.

At the same time, the feminist student needs to be personally strong to be able to *bear* a traditional black-letter education. Studying on a course where your sex is continually wronged, your viewpoint goes unrepresented and your reactions are rejected as irrelevant, can be quite a culture shock, especially for those accustomed to the camaraderie of the women's group or the supportive atmosphere of the Women's Studies class. Fortunately, though, learning to 'think like a lawyer' does develop in the individual precisely those skills of detachment and the ability to view issues 'objectively' that enduring this kind of alienation from one's own ways of seeing things, indeed one's very identity, requires.

There is one further benefit to be derived from studying the conventional curriculum. You become alert to every argument used to justify women's inequality, every technique drawn upon to advance the patriarchal cause. This is a valuable spur to one's own analysis. 'Overt opposition', suggested Jo Freeman in 1975, 'is preferable to motivational malnutrition'.[30] You get to know your enemy pretty thoroughly and, as Patai and Koertge observe: 'Radical approaches to knowledge are most effective when they challenge received orthodoxy.'[31] The feminist who survives the conventional law curriculum emerges with her skills – both analytical and strategic – well-honed.

Moreover, the feminist who excels at a traditional law school makes an important feminist point: that women are the intellectual equals of men. In spite of the generally superior performance of women over men in schools and universities today, women's abilities are still not universally acknowledged, as witness the dearth of women in the top echelons of the intellectual professions. Helena Kennedy has pointed out that when senior men speak of advancement on 'merit', they really mean 'male standards and criteria'.[32] Women's failure to fulfil these criteria can then be, and often is, put down to a lack of 'merit'. Success at law school helps to counter that claim, for there we are beating men at their own game.

But for students who arrive at law school without a highly developed feminist consciousness – ie the majority of our students – the LLB can be a dangerous educational tool. It is dangerous because it presents students with a body of knowledge to learn and a set of rules with which to apply it, leaving little room, if any, for the problematising of that very knowledge and that very methodology. 'Thus,' say Mary O'Brien and Sheila McIntyre, 'students arriving in law school, highly motivated to learn doctrine but innocent of any perception of what it is, are subjected to an ideological immersion which they have no critical tools to evaluate'.[33] As Julian Webb puts it:

29. N Naffine 'In praise of legal feminism' (2002) 22 LS 77.
30. Quoted in Patai and Koertge, n 28 above, p 113.
31. Patai and Koertge, n 28 above, p 120.
32. Quoted in McGlynn, n 10 above, p 48; and see H Kennedy *Eve Was Framed: Women and British Justice* (London: Vintage Books, 1992).
33. O'Brien and McIntyre, reprinted in Olsen, n 5 above, p 31.

> '... this is rather like suggesting a degree in "tennis studies" should constitute three years of close, systematized analysis of the rules of the Lawn Tennis Association and its institutions. It neither fully equips one to play nor to locate the rules and institutions meaningfully in the social world.'[34]

Not only does the present law curriculum ignore the gender (and other) implications of much substantive law and the systematic discrimination deployed in its implementation, but the very technique at the heart of legal method – learning to 'think like a lawyer' – encourages complacency with the status quo and detachment from injustices crying out to be remedied. For feminists, the problem with the current legal curriculum is not simply that it is inadequate to the task of preparing tomorrow's lawyers to tackle injustice, but that it positively contributes to the perpetuation of that injustice.

THE CORE CURRICULUM

> 'I am told that if I ever want to teach I must learn maths and Latin and chemistry, in order to pass exams and be properly qualified. Why? To teach the same maths and Latin and chemistry to other girls, in order that *they* may become teachers? Is that not what is called "a vicious circle"? If the subjects were desperately necessary there'd be some sense in it, but aren't they arbitrary? Why not Japanese and a knowledge of the paper-making industry?'[35]

Debate on the academic content of the law degree in England and Wales must always be conducted within the parameters set by the two legal professions, the Law Society (representing solicitors) and the Bar Council (barristers). It is only in the last 40 years or so that the law degree has been regarded as the principal route to legal practice, but the profession has always exerted a close surveillance on the content and, more recently, the skills required to be taught in order for a course to be recognised as 'qualifying'.[36] The current core curriculum of 'foundational subjects' occupies between a half and two-thirds of the LLB course in most institutions and consists of subjects 'deemed, with no good reason except history, indispensable for the practice of law', as H W Arthurs wrote of its Canadian equivalent.[37]

To a foreign lawyer, and even more to a non-lawyer, the English core curriculum must look bizarre. Contract, Tort, Public Law, Crime, EU Law,

34. J Webb 'Ethics for Lawyers or Ethics for Citizens? New Directions for Legal Education' (1998) 25 JLS 137.

35. A Brazil *Schoolgirl Kitty* (London & Glasgow: Blackie, [1923]) p 165.

36. E Jenks 'English Legal Education' (1935) 101 LQR 152; Franz, n 14 above; A Boon 'History is Past Politics: A Critique of the Legal Skills Movement in England and Wales' (1998) 22 JLS 151. The 'core curriculum' itself only became an accepted feature of the LLB following the Report of the Committee on Legal Education (the Ormrod Report) Cmnd 4595, 1971.

37. H W Arthurs 'The Political Economy of Canadian Legal Education' (1998) 22 JLS 21. 'Great care must be taken,' warns Geoffrey Samuel, '... before concluding that the so-called foundational subjects rest on any serious educational theory': G Samuel 'Comparative law as a core subject' (2001) 21 LS 446.

Property Law and Equity and Trusts – why those seven subjects? There is merit and usefulness to be found in each but, in terms of offering a 'foundation' in law, this selection would be hard to justify. The effect, however, of designating some subjects compulsory and others optional is naturally to devalue the latter, thus reinforcing the prejudices of legal practice, where property-based and commercial work enjoys the esteem associated with wealth and power, while family and 'welfare' work ranks low because it is associated with ordinary (poorer) people, including women. (In this analysis, critical and theoretical work is simply irrelevant.) Despite a shift in English legal thinking away from the view that property matters more than people, vested interests have ensured that the core curriculum, with a few alterations (for example, the addition of Equity and Trusts, and later EU Law), remains rooted in the past and, like patriarchy, just rolls on reproducing itself.

Other jurisdictions do things differently. In many countries the core curriculum covers a much broader range of subjects, encompassing an introduction to everything likely to be encountered in practice, along with legal history and theory, with the result that the course takes longer and opportunities for options are much reduced. In the Mexican university with which my own institution is affiliated, the law degree lasts for ten packed semesters and almost everything is compulsory. This means that everyone has to study Family Law and the rest. Even if in practice commercial work enjoys greater esteem, at least the subjects enjoy parity in the academy.

The education of the English law student is really staggeringly narrow. He or she will probably have studied only three subjects in depth at A-level. Black-letter 'foundation' subjects dominate the LLB, and few students take up any opportunity to include an option from outside the law school.[38] When choosing from the range of legal options, students are all too aware that not all options offered are regarded as 'equal', and often select for pragmatic and strategic reasons rather than genuine interest. Many feel pressed to construct a heavyweight programme which will look impressive on their CV: these students will opt for Company Law rather than Women and Law. O'Brien and McIntyre draw attention to the phallic imagery used to differentiate 'hard' subjects (property, commercial law) from 'soft' options (those with a sociological, critical or policy approach). The latter 'disproportionately attract (and console) non-mainstream students, but there is no doubt that an A in commercial law trumps an A in women's studies'.[39] In my experience, students drawn to a Women or Gender and Law course are sometimes anxious about how potential employers will view the presence of those words on their transcript. While, in fact, most firms care more about good grades, whatever the subjects, and some may even welcome the presence of something 'different' in a student's CV to mark them out from other applicants, I have heard from former students of actual derogatory comments about Women and Law courses made by some potential employers at interviews.

38. Indeed, students are not encouraged to do so. A 1993 survey of legal education in the 'old' universities found 'a reluctance ... to further liberalise the law degree syllabus by introducing significant numbers of non-legal options into the curriculum': J Wilson 'A third survey of universities: legal education in the United Kingdom' (1993) 13 LS 166.
39. O'Brien and McIntyre, reprinted in Olsen, n 5 above, p 32.

So how should we proceed? I think we must keep the existing core curriculum (that is, the seven 'foundation' subjects): there are too many vested interests there, not least among the staff teaching these subjects within the academy. But this should take up no more than half the degree. For the rest, we need a broadly based compulsory curriculum including subjects like Family Law, Employment Law, Legal Theory and Legal History. In addition, courses in Gender, Race and Sexuality perspectives would encourage the study of law from the outside, that is, starting from the person, not the legal category. This is potentially the most radical area of the curriculum, for it should force students to think critically and empathically, act as a liberalising and, with luck, radicalising influence, and equip students with critical skills and methodologies that they can apply across their legal studies.

In outlining my proposed new core curriculum, I do not wish to be any more prescriptive than this. There must be room for each institution to organise its syllabus within these broad parameters according to its own academic strengths and student interest. In a sense, what matters is not so much the choice of subjects as the content and approach of those subjects. Legal theory and legal history, for example, must be reconfigured to make sense not only of our idiosyncratic legal forms, but also of students' lives. A legal history course that confines itself to the development of existing institutions, as many currently do, with no reference to the women's rights movement or the impact of imperial rule on the British colonies, only serves to legitimise and perpetuate inequality. Similarly, tacking on 'feminist theory' at the end of a jurisprudence course, the rest of which consists of the products of great male minds, can easily suggest to students that feminism is a marginal alternative, not a critique of all that has gone before. As Adrienne Rich explained in an address to the students at Smith College in 1979, in answer to the question 'What does a woman need to know to become a self-conscious, self-defining human being?':

> 'Doesn't she need a knowledge of her own history, of her much-politicized female body, of the creative genius of women ... in other times and cultures, and how they have been rendered anonymous, censored, interrupted, devalued? Doesn't she, as one of that majority who are still denied equal rights as citizens, enslaved as sexual prey, unpaid or underpaid as workers, withheld from her own power – doesn't she need an analysis of her condition, a knowledge of the women thinkers of the past who have reflected on it, a knowledge, too, of women's world-wide individual rebellions and organized movements against economic and social injustice, and how these have been fragmented and silenced?'[40]

The denial of access to one's heritage, to the knowledge of what one's forerunners have achieved and how they have resisted, has long been recognised as one of the most powerful tools of control by the dominant group over the rest. Men's iron grip on the educational curriculum (what is included and, in particular, what has been systematically *ex*cluded) led Rich to conclude,

40. A Rich 'What Does a Woman Need to Know?' in Rich, n 22 above, p 2.

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like Mary Wollstonecraft more than 200 years before, that 'not anatomy, but enforced ignorance, has been a crucial key to our powerlessness'.[41]

It may be that the expanded core curriculum will fill most or all of a three-year course, leaving no room for specialist options. So be it. This seems a small price to pay for a much more balanced programme of studies, with areas impacting on women's lives given equal priority with those of relevance to commercial interests. In response to the outcry which would certainly arise at the consequent inroads into option time, I would point, on the one hand, to the professional stage, where commercial subjects may be enjoyed to one's heart's content, and, on the other, to the increasing importance of the Master's degree. The English undergraduate law degree is probably the shortest in the world. More and more students look to the LLM to give them an edge in the competition for training contracts and pupillages. Here is the place for the sort of specialisation students presently pursue in their options. Here is the way to improve the educational level of our lawyers to come.

FEMINIST PERSPECTIVES

No one can doubt the huge impact of critical and socio-legal studies on legal scholarship over the last 30 years. As Derek Morgan and Celia Wells observe, a survey of recent journals would indicate that 'there is no area of the modern law school diet which is not being reworked, rethought, recharacterised'. But they also note that the effect of this scholarship on *teaching* has been more restricted, and largely confined to the optional curriculum: 'would a student who went into a deep sleep in 1970 fail to recognise the core of the law degree taught today?', they ask rhetorically. In particular, 'Lessons of feminist legal scholarship, with insights about women *in* law and in legal knowledge seem to have penetrated only very marginally if at all into the way we teach law'.[42] This demonstrates that a feminist legal curriculum must do more than simply add a few subjects to the core. Indeed, merely adding a few apparently 'women-friendly' subjects without changing the way the 'foundational subjects' are delivered would be retrograde, for it would promote the illusion of egalitarianism without the substance. The black-letter approach which dominates most teaching in the existing core curriculum and elsewhere would still appear to be the only or the best way to deal with those subjects, and any critical insights students might acquire on a Women and Law course would be seen as confined to that subject and inapplicable to the rest of the syllabus.

41. Rich, n 40 above. See M Wollstonecraft *A Vindication of the Rights of Woman* (London: Joseph Johnson, 1792). There may be other subjects which a competent committee might deem essential for a core curriculum, but the last one I would urge is a foreign language. The archetypal Englishman's expectation that everyone should speak his language is both arrogant and insulting, but it is also limiting. Learning another language is a route into another culture and an appreciation of differences, engendering a more critical view of one's own. Its inclusion will ensure that our undergraduates encounter at least one non-law subject on their course.

42. D Morgan and C Wells 'Editorial' (1998) 19 LS 1, 3.

No, the challenge for a feminist legal curriculum is to *keep* the black-letter approach of learning cases and statutes and applying the law to the facts, but to *go beyond it*. The system of applying existing law to new fact situations is not simply the heritage of the English courts, but also the way they continue to operate; it is the very basis of English justice and, as a general principle, is not under attack, by feminists or anyone else. But it is not a system which is above criticism; indeed, criticism is imperative, both with respect to particular manifestations (those where judges have exercised creativity in the application of existing law, for example) and in principle (when following the rules produces the 'wrong' result). In the existing curriculum, equitable interventions do prompt some consideration of 'justice', but the discussion must be curtailed whenever the jurisdiction is applied, as it so often is, with as rigorous a respect for precedent as is common law. In the context of co-ownership, for instance, *only* a feminist perspective could make sense of equity's haphazard reference to justice and/or social context over the last 50 years.

So, to reiterate, a feminist legal curriculum would have students learning the law *as it is*, and as rationalised by conventional legal reasoning; but the lesson would not end at this point: there would be two further steps. First, students would be encouraged to consider the law *from other standpoints*. Such an approach, Sam Banks argues, would help to validate the views and experiences of students who do not fit the dominant construction of the 'man of law', making them more comfortable and receptive to learning.[43] This process must begin in the first week of study, before the skill of 'thinking like a lawyer' has become second nature, and it must be endorsed and shared by every lecturer in every subject, so that it becomes the norm.

The introduction of other viewpoints may be justified in terms of government and professional commitment to cultural diversity and inclusiveness, as Sam Banks argues.[44] This in itself would be a radical step, but it is not enough on its own. Engendering tolerance and respect for difference, while an excellent project, will not dismantle law's power structures. Subordinate groups do not just happen to be subordinate; the dominance of particular groups *depends* on the subordination of others – it is a relationship of exploitation. If Marx made that clear with regard to class, feminists have demonstrated that gender is constructed on a similar basis (as, indeed, are race and sexuality). An analysis of the English law which exempted husbands from rape charges, for example, may be criticised as not considering the wife's point of view. But this would be an absurd interpretation: apart from anything else, it is inconceivable (and, as the case law shows, untrue) that judges never did consider wives' point of view until 1991 when the law changed. They considered it many times, but always decided to retain the marital exemption. In 1980, for example, the Criminal Law Revision Committee declined to offer married women protection against rape by their husbands on the grounds that:

> 'If a wife could invoke the law of rape in all circumstances in which the husband had forced her to have sexual intercourse without her consent, the consequences for the children could be grave, and for the wife too ... The

43. N K S Banks 'Pedagogy and ideology: teaching law as if it really matters' (1999) 19 LS 450.

44. Banks, n 43 above, at 464.

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type of questions which investigating officers would have to ask would be likely to be greatly resented by husbands and their families.'[45]

This truly feeble melange of projection, guilt-tripping and vague threats reveals very clearly how many forms of legal reasoning must be seen, not simply in terms of *inequality* between men and women, but as *a refusal to limit the rights of men*, even though, in so refusing, the law enforces men's freedom at the cost of women's exploitation. It is not just a question of sharing power, but of *giving it up*.

Of course, if you turn to most legal textbooks you will not find this analysis offered as an explanation for the marital rape exemption. Indeed, you will not even find women's point of view. There is an account of the development of the law in this area in *Exploring the Law: The Dynamics of Precedent and Statutory Interpretation* by Manchester et al.[46] The inclusion of a topic so relevant to women in a student textbook should be welcome, but when, as here, all we are offered is an examination of the ways judges resisted and then justified social change, it is worse than useless. We are back to Julian Webb's 'tennis studies' example, presented in the form of Whig history: we should be grateful that men are so much nicer now! (Nothing said, of course, about *women's* campaigns to change the law.) It is not enough to include a few examples which relate to women; there must be space for both women's experience and a feminist analysis. 'The man in the Clapham omnibus does not change his perception of common sense simply because his wife sits speechlessly beside him', as O'Brien and McIntyre sagely observe.[47]

There are many ways of giving space to women's voices. Students may, of course, volunteer their own experiences, but it may be hard, especially for those well-schooled in legal method, to step outside the neutral persona of the law, or to speak of very personal matters in a potentially hostile classroom.[48] Some law teachers have turned to literary or autobiographical texts to provide alternative visions of justice and to promote debate and critique of legal norms.[49] Personal writing – anathema to traditional scholarship – confronts students with the forbidden 'I', making the discussion uncomfortably real and concrete instead of hypothetical and abstract. I doubt if any student could remain impartial about the law of rape after reading Susan Estrich's article on the subject which begins:

45. Criminal Law Revision Committee *Working Paper on Sexual Offences* (London: HMSO, 1980) p 13.

46. C Manchester, D Salter, P Moodie and B Lynch (London: Sweet & Maxwell, 1996).

47. O'Brien and McIntyre, reprinted in Olsen, n 5 above, p 38.

48. Inseparable from the student's experience of law studies is her experience of the law school itself. Feminist research has identified the two main problems facing women in education as the masculine control of the syllabus and the sexual politics of the institution. Here I can do no more than to direct readers to research on the culture of UK law schools and its effect on students' learning and teachers' teaching. See McGlynn, n 10 above; Collier, n 17 above; and Wells, n 17 above. The clear message which emerges from the literature is that no feminist legal curriculum will succeed without a profound change in the culture, ethos and composition of law schools, which at present imitate all too closely the power relations, the very masculinity, of the law itself.

49. J St Joan and A B McElhiney (eds) *Beyond Portia: Women, Law, and Literature in the United States* (Boston: Northeastern University Press,1997); McGlynn, n 10 above, p 51.

> 'Eleven years ago a man held an ice pick to my throat and said: "Push over, shut up, or I'll kill you." I did what he said, but I couldn't stop crying. A hundred years later, I jumped out of my car as he drove away.'[50]

'Experience keeps us rooted in the daily lives of women (and men),' observe Julia Brophy and Carol Smart, 'but it does not provide us with a blueprint for change nor – and this is equally important – does it in itself provide our own analysis of law and legal practice.'[51] Recognition of the many different standpoints and experiences of law should lead students to a recognition of the ideological content of law. This brings us to the second addition to the study of legal reasoning, the feminist analysis. Joanne Conaghan has suggested a three-part methodology of feminist critique which seems to me excellent: exploring the gendered content of law (for example, how law constructs men and women); placing women (*not* men, *not* the law) at the centre of inquiry; and considering the gendered implications of the law (such as how it tends to benefit men at the expense of women), which in turn leads to the development of strategies for change.[52] We are now beginning to see published models of 'doing legal education the feminist way'[53] as well as achievable proposals for law reform (feminist theory-into-practice).[54] If and when these are translated into actual legal change, then the feminist project will be vindicated, and the relevance of feminist legal education be made manifest to all.

IMPLEMENTING THE CURRICULUM

Andy Boon has observed that any vision of a truly liberal legal education 'remains elusive' because of its dependence on an unrealistic level of co-operation between an academy constantly trying to extend students' critical boundaries and a profession dedicated to the status quo. 'The lesson of history,' he concludes with characteristic gloom, 'is that this will not occur'.[55]

But is he right? In 1995, the Law Society and the Council for Legal Education issued a Joint Announcement on qualifying law degrees. It replaced the model syllabuses for the six core subjects then required by less detailed outlines of seven foundational subjects, plus legal research, which were to form the core curriculum of future qualifying law degrees. The outlines were prefaced by an introduction explaining that 'the objective of identifying the foundations of legal knowledge is to ensure that all students who intend to qualify as

50. S Estrich 'Rape' in P Smith (ed) *Feminist Jurisprudence* (Oxford: Oxford University Preess,1993) p 158.
51. J Brophy and C Smart (eds) *Women in Law: Explorations in Law, Family and Sexuality* (London: Routledge and Kegan Paul, 1985) pp 3–4.
52. J Conaghan, n 12 above, at 357–359.
53. Eg K Green and H Lim 'What is This Thing Called Female Circumcision? Legal Education and Human Rights (1998) 7 SLS 36; N Lacey and C Wells *Reconstructing Criminal Law: Text and materials* (London: Butterworths, 2nd edn, 1998).
54. Eg A Barlow and C Lind 'A matter of trust: the allocation of rights in the family home' (1999) 19 LS 468; G Monti 'A reasonable woman standard in sexual harassment litigation' (1999) 19 LS 552.
55. Boon n 36 above, at169.

professional lawyers will have demonstrated' five specified learning outcomes, of which two are interesting for the purpose of this paper. As well as understanding the fundamental principles of English law, having a knowledge of its sources and institutions, and acquiring analytical and communication skills, students were expected to have:

> '(iii) an appreciation of the social and other pressures that shape the development of the law of England and Wales ...'

and

> '(v) the ability to reflect on the fundamental social concepts such as justice, liberty and rights, and the contribution that the law makes to the advancement of those principles.'

It is entirely conceivable that a student could successfully complete a conventional black-letter curriculum today without meeting either of these learning outcomes. While few of us teach without *any* reference to policy or justice, we do not always assess students on their 'appreciation of' or 'ability to reflect on' these concepts in their legal studies; and it is perhaps for this reason that these specified outcomes disappeared from the next Joint Statement, published in 1999. Gone are the reflective elements of the degree; all we have left are 'knowledge' and 'transferable skills'.

The academic community largely welcomed the 1999 Joint Statement because it was less prescriptive than the 1995 one – the foundational core was reduced to a series of headings (Criminal Law, Public Law and so on) – and so seemed to lay a lighter hand on our activities in the law school. But no one seemed to notice that we had lost the profession's last gesture to a liberal education. This retreat has been reinforced by the subsequent consultation paper from the Law Society and Bar Council in July 2002.[56] This offered for discussion the idea that the profession should not only return to greater prescriptiveness about the content of the foundation subjects, but also impose a larger core curriculum including, for instance, Company Law and Evidence. Only pressure from large commercial law firms could have prompted this suggestion. Of course, it was roundly rejected by the academic community, along with the idea that practising lawyers should act as external examiners of law degrees; but the fact that the debate is happening now is evidence of the profession's anxiety that academic legal education is no longer producing the 'right' kind of trainee lawyer.

In expressing their frustration at the inadequate preparation of law graduates for legal life, the profession may simply be confronting the obvious decline in standards of general education that law teachers, too, are grappling with. But they may also feel that the law schools' persistence in trying to educate our students broadly and critically rather than narrowly and efficiently is the *cause* (or part of it) of the students' poor preparation for professional life. *And they may be right.* This may not be a bad thing. Perhaps we are already unsettling the legal status quo. If so, the way forward is clearly not to do less of the critical stuff, but *more*.

56. The Law Society of England and Wales and the General Council of the Bar of England and Wales 'The Academic Stage of Training for Entry to the Legal Profession. Standards, Content and related Issues: A Consultation', July 2002.

At the moment law schools have, in fact, considerable autonomy, not only to deliver optional courses from any validated perspective whatsoever, but also to teach our core courses with due attention to critical, socio-legal and, indeed, feminist scholarship. As things stand, the profession controls the content of only half the current LLB curriculum. The other half of the curriculum is still ours to play with and, within the bounds of academic respectability, we can take whatever approach we want to *that*.

Indeed, the stranglehold of the profession on student learning is felt less in what they tell us we must do than in what students believe *they* must do – that is, their instrumental choices of options. Restrict or abolish the element of choice and that stranglehold will be released. Expose all students to a common wide-ranging curriculum and the disadvantage experienced or perceived to be experienced by those who choose 'soft' options will cease to exist. When subjects like 'Gender/Race/Sexuality and Law' become the norm and, indeed, obligatory, their appearance on a student's transcript will occasion no particular comment. This is not as unlikely as it may sound. In 1993 an Australian strategy group at a conference on 'Judicial Attitudes as They Impact on Women' recommended that both law students and qualified lawyers undertaking continuous professional education should be required to take courses on 'women and the law, sexism/racism/ethnophobia and the law or feminist jurisprudence'.[57] Other countries (for instance, Sweden) have already made the study of the differential impact of law on men and women a compulsory part of their law degree.[58]

Contrary to what we often imagine, the law curriculum has not been unresponsive to social change. EU Law was not around in my day, Human Rights is now assuming unprecedented importance and the next generation must expect to face different challenges. In an account of 'English Legal Education' published in 1935, Edwards Jenks noted 'a tendency ... towards extending the scope of the law courses to include new subjects'[59] and the same was noted between the 1975 survey of UK law schools and the 1992 one.[60] There is no reason, then, why the LLB should not continue to adjust to social needs and take on board the feminist agenda.

Working against the continued expansion of the curriculum, however, is the current combination of declining funds and increased pressure on staff to do other things besides teaching (research, consultancy work, money-raising, marketing and a vastly increased amount of administration). My proposed curriculum, then, which actually *reduces* subject offerings, could prove attractive to law school managers struggling to maintain an increasingly unprofitable range of optional courses.[61] At the same time, most law schools

57. J Scutt 'Strategies for Increasing Awareness within the Law Concerning Sex Bias' in A Thacker (ed) *Women and the Law* (Geelong: Deakin University Press 1998) p 116.
58. E-M Svensson 'Sex Equality: Changes in Politics, Jurisprudence and Feminist Legal Studies' in K Nousiainen, A Gunnarsson, K Lundstrom and J Niemi-Kiesilainen (eds) *Responsible Selves: Women in the Nordic Legal Culture* (Aldershot: Ashgate, 2001) p 88.
59. Jenks, n 36 above, at 172.
60. Wilson, n 38 above, at 166.
61. The experience at my own institution is that options have already been cut back to save money, space and staff time, and to ensure that core subjects remain adequately resourced. The trouble is that these are often the socio-legal or critical options chosen by a minority of students.

are expanding their Masters provision, so that lecturers deprived of their LLB options need not fear the loss of their pet specialisms – they can deliver them at Masters level instead.

None of this, however, avoids the biggest hurdle facing the feminist legal curriculum: that is, persuading the staff to deliver it. Given the strength of resistance within the law school, already chronicled in this paper, how on earth do we get law teachers to change?

This too is not an impossible task: it has been done in other disciplines and in other places. When Jill Ker Conway became President of the prestigious US women's college, Smith, in the 1970s, she set about transforming a traditional curriculum into one which took proper account of feminist scholarship. When the largely conservative faculty blocked her efforts again and again, she and a small coterie of feminist colleagues mounted a programme of unofficial, non-credit *feminist* courses in all areas of the curriculum. Students flocked to these innovative, meaningful sessions, and carried their new knowledge and insights back into their official courses. Unable to banish feminist ideas from their classrooms, the old guard eventually gave way and wrote feminism into their own syllabuses.[62]

One reads this heartening account of feminist transformation with a mixture of admiration for Jill Ker Conway and a sober recognition that conditions in a US, private, elite, women-only, liberal arts college in the 1970s, when the women's movement was in the ascendant and students were politically engaged, are very different from conditions in British public, mixed-sex law schools in the 2000s, when feminism is a dirty word and students' attentions are taken up by the daily struggle to survive and the single-minded pursuit of a career in one of the most conservative professions on earth. Yet, although we can hardly adopt Jill Ker Conway's methods – how many of us have the time or the energy to run additional classes? (in my institution we would not even have the rooms) – still, her story shows that *it can be done* – the worm can turn, if it has to.

This is a process that is already underway: feminist legal scholarship is accepted as legitimate; it takes up an increasing amount of space in journals; feminists are already active in most law schools, and occupy positions of considerable influence in several; more and more young people are entering academic life who have themselves benefited from a measure of feminist education; and once a feminist legal curriculum is in place, obviously many more will follow. However, as Ngaire Naffine recently remarked: 'The changing of the legal mind still depends on the continuing goodwill of fair-minded men (and women) who are willing to listen to feminist scholars and to learn from them, and thus to enter into dialogue.'[63] *I* think that if we wait for all men and women to be willing to listen to us, we could wait forever. Change must become a political imperative.

How do things become political imperatives in education? Money talks, for a start; but there is little evidence that feminist courses are drawing crowds of fee-paying students into law schools (or anywhere else) at the moment. Feminist scholarship *is* becoming increasingly significant and welcome in the

62. J Ker Conway *A Woman's Education* (New York: Vintage Books, 2000) p 63.
63. Naffine, n 29 above, at 101.

pursuit of a high score in the Research Assessment Exercise, and I suppose it is possible, depending on the form that future research funding takes, that this could be used as a lever to force changes in the curriculum. Teaching quality, too, is set to become more important for funding, and if the inclusion of feminist perspectives were made a criterion of quality, then the curriculum would have to adapt, or lose credibility – and money.

But stronger still is the power of policy. It is not beyond the realms of possibility that the profession and/or the government will themselves indirectly pave the way for the introduction of a feminist legal curriculum. I take heart from the introduction of judicial education on matters of gender, race and sexuality. Leaving aside the possibly token nature of this training, and the fact that it may not be of a very high quality (but this is something we could influence), the fact remains that it is accepted as a priority by both government and the legal profession. Recent research projects initiated by both the Bar Council and the Law Society suggest official concern about institutionalised discrimination within their ranks, and their findings have shaken the complacent faith in formal equality measures that characterises the legal establishment.[64] A convincing argument that education at judicial level, and even structural reform of the profession, are really too little, too late could lead to a call for the inclusion of diversity and equality elements across the curriculum. When the call comes, feminists will be ready; and because the black-letter lawyers will have no idea how to proceed, we will take the lead in re-casting the LLB. (Writing course documents is precisely the kind of administrative work we tend to be assigned, anyway.) We can insert the necessary learning outcomes and benchmarking standards into each course; we can direct our colleagues' attention to relevant literature; we can even, I hope, write the new-style textbooks, become sought-after by publishers at present reluctant to take feminist work, and reap the financial rewards. Feminist scholarship will then be indisputably relevant to the study and practice of law.

ONE LAST THOUGHT

When feminism becomes the norm in legal education, what will happen to feminism as a critique, as a political movement? Will we then have reached the ideal world First-Wave feminists dreamed of, in which feminism, no longer needed, will fade away? Or are we in danger, as Second-Wave feminists feared, of allowing ourselves to be co-opted and absorbed into the dominant ideology? In other words, will the imposition of a feminist legal curriculum truly transform legal relations between men and women, or are we just tinkering at the edges of a much more powerful patriarchal impulse?

Who knows, until we try? Truthfully, I think a full transformation is unlikely. Feminists know only too well that every advance is followed by a backlash,

64. Eg A Boon, L Duff and M Shiner 'Career Paths and Choices in a Highly Differentiated Profession: The Position of Newly Qualified Solicitors' (2001) 64 MLR 563. Two of my colleagues at the University of Westminster, Liz Duff and Lisa Webley, are currently working on a study commissioned by the Law Society looking into reasons why women leave the legal profession.

that once we master the game, the rules are always changed; that male power is a hugely complex web of structural control that is impossible to grasp in its entirety and hard to imagine overcoming. But the introduction of a feminist legal curriculum will certainly impede the easy reproduction of male power under our existing legal education, while helping to arm our students with the knowledge, skills and confidence to fight the battles that lie ahead.

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